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Shum Lai Lin v Cheang Kim Leong & Anor

B HIGH COURT (IPOH) — JUDICIAL SEPARATION PETITION NO AA-33–183–05 OF 2023
ABDUL WAHAB J
11 JUNE 2024

C *Family Law — Judicial separation — Application for interim maintenance — Petitioner claimed for interim orders pending disposal of judicial separation petition — Whether petitioner entitled to receive interim maintenance of RM50,000 per month from respondent pending disposal of judicial separation petition — Whether amount of interim maintenance claimed was reasonable*

D

This was the petitioner's application for an interim maintenance payment of RM50,000 per month from the respondent, pending the disposal of the judicial separation petition. The petitioner and the respondent entered matrimony on 8 October 1987 and had three children who were now 36, 33, and 31 years old. The petitioner and the respondent were in courtship since 1977 where the respondent prohibited the petitioner from working in any companies after she had completed her secondary education. Instead, the respondent had only agreed for the petitioner to conduct tuition classes from around 1981 until their marriage in 1987. Following their marriage in 1987, the petitioner ceased formal employment but continued to support the respondent with his business endeavours until the final stages of her pregnancy with their eldest child. After the birth of the children, while primarily responsible for their upbringing, the petitioner also intermittently assisted the respondent with his work as needed. The relationship between the parties had however deteriorated due to the respondent's alleged adulterous relationship with the co-respondent. Consequently, the respondent stopped providing the monthly sum of RM50,000 to the petitioner after May 2022. The petitioner vacated the matrimonial home on 4 April 2023 and subsequently filed the judicial separation petition on 26 May 2023. Since the petitioner's departure, the respondent had ceased making payments towards the instalments for properties, vehicles, and insurance policies registered solely in the petitioner's name. As a result, the petitioner had to rely on her savings and salaries from two family companies to sustain herself and cover all related expenses. In her judicial separation petition, the petitioner had prayed for, amongst other relief, that the respondent be ordered to pay interim maintenance of RM50,000 to per month pending the disposal of the petition. The respondent contested the petitioner's request for interim maintenance on the following grounds: (a) the total sum claimed by the petitioner was excessively inflated and/or speculative; (b) the petitioner possessed the financial means to maintain her current

lifestyle; and (c) the respondent's monthly income and/or allowance was insufficient to meet the interim maintenance claimed by the petitioner. The issues for consideration were: (i) whether the petitioner was entitled to receive interim maintenance of RM50,000 per month from the respondent pending the disposal of the judicial separation petition; and (ii) the reasonable amount of interim maintenance to be awarded.

Held:

(1) The petitioner had not been gainfully employed since 1987 and had relied solely on the respondent for financial support. The petitioner was primarily dependent on the respondent's financial support throughout the duration of their marriage. While the petitioner's income and savings offer a degree of financial stability, they fell short of maintaining the standard of living she was accustomed to during the marriage. Therefore, an interim maintenance order was necessary to bridge this financial gap. Thus, the petitioner was entitled to the interim maintenance (see paras 27–30).

(2) The petitioner's disclosure of income and bonuses from family companies appeared adequate. The respondent's assertion of monthly income was highly doubtful and his failure to provide full and frank disclosure of his income left his monthly income uncertain. Hence, the respondent had the means to meet the interim maintenance claimed. Given the petitioner's substantial financial assets and income from other sources, an interim maintenance award of RM30,000 per month would be a more reasonable figure. This amount should adequately cover the petitioner's necessary expenses while considering her own financial contributions and the respondent's financial capacity. Considering the length of the marriage and the petitioner's current lack of income, it was appropriate to order interim maintenance until the final determination of the judicial separation proceedings (see paras 39, 41 & 44–45).

[Bahasa Malaysia summary

Ini adalah permohonan pempetisyen untuk bayaran nafkah interim sebanyak RM50,000 sebulan daripada responden, sementara menunggu pelupusan petisyen perpisahan kehakiman. Pempetisyen dan responden telah berkahwin pada 8 Oktober 1987 dan mempunyai tiga orang anak yang kini berusia 36, 33, dan 31 tahun. Pempetisyen dan responden telah menjalani percintaan sejak 1977 di mana responden melarang pempetisyen daripada bekerja di mana-mana syarikat selepas pempetisyen menamatkan pendidikan menengahnya. Sebaliknya, responden hanya bersetuju untuk pempetisyen menjalankan kelas tuisyen dari sekitar tahun 1981 sehingga perkahwinan mereka pada tahun 1987. Selepas perkahwinan mereka pada tahun 1987, pempetisyen berhenti bekerja secara rasmi tetapi terus menyokong responden dalam usaha perniagaannya sehingga akhir kehamilannya dengan anak sulung

mereka. Selepas kelahiran anak-anak, sementara bertanggungjawab terutamanya untuk membesarkan mereka, pempetisyen juga secara berselang-seli membantu responden dengan kerjanya apabila diperlukan. Walau bagaimanapun, hubungan antara kedua-dua pihak telah merosot akibat hubungan sulit yang didakwa responden dengan responden bersama. Akibatnya, responden berhenti memberikan jumlah bulanan sebanyak RM50,000 kepada pempetisyen selepas Mei 2022. Pempetisyen meninggalkan rumah perkahwinan pada 4 April 2023 dan seterusnya memfailkan petisyen perpisahan kehakiman pada 26 Mei 2023. Sejak pemergian pempetisyen, responden telah berhenti membuat pembayaran ansuran bagi harta, kenderaan, dan polisi insurans yang didaftarkan hanya atas nama pempetisyen. Oleh itu, pempetisyen terpaksa bergantung pada simpanannya dan gaji dari dua syarikat keluarga untuk menyara diri dan menampung semua perbelanjaan berkaitan. Dalam petisyen perpisahan kehakimannya, pempetisyen telah memohon, antara lain, relif agar responden diarah untuk membayar nafkah interim sebanyak RM50,000 sebulan sementara menunggu pelupusan petisyen tersebut. Responden membantah permintaan pempetisyen untuk nafkah interim atas alasan berikut: (a) jumlah keseluruhan yang dituntut oleh pempetisyen adalah terlalu tinggi dan/atau spekulatif; (b) pempetisyen memiliki kemampuan kewangan untuk mengekalkan gaya hidupnya sekarang; dan (c) pendapatan bulanan dan/atau elaun responden tidak mencukupi untuk memenuhi nafkah interim yang dituntut oleh pempetisyen. Isu-isu untuk pertimbangan adalah: (i) sama ada pempetisyen berhak menerima nafkah interim sebanyak RM50,000 sebulan daripada responden sementara menunggu pelupusan petisyen perpisahan kehakiman; dan (ii) jumlah nafkah interim yang munasabah untuk dibayar.

Diputuskan:

(1) Pempetisyen tidak pernah bekerja dengan kelayakan sejak 1987 dan hanya bergantung sepenuhnya kepada responden untuk sokongan kewangan. Pempetisyen secara amnya bergantung pada sokongan kewangan responden sepanjang tempoh perkahwinan mereka. Walaupun pendapatan dan simpanan pempetisyen menawarkan tahap kestabilan kewangan, ia tidak mencukupi untuk mengekalkan standard kehidupan yang biasa dilaluinya semasa perkahwinan. Oleh itu, perintah nafkah interim adalah perlu untuk menampung jurang kewangan ini. Dengan itu, pempetisyen berhak kepada nafkah interim (lihat perenggan 27–30).

(2) Pendedahan pempetisyen mengenai pendapatan dan bonus dari syarikat keluarga dilihat memadai. Kenyataan responden mengenai pendapatan bulanan adalah sangat meragukan dan kegagalannya untuk memberikan pengakuan penuh dan jujur mengenai pendapatannya menyebabkan pendapatan bulanan beliau menjadi tidak jelas. Oleh itu, responden mempunyai kemampuan untuk memenuhi nafkah interim yang

dituntut. Memandangkan aset kewangan pempetisyen yang besar dan pendapatan dari sumber lain, anugerah nafkah interim sebanyak RM30,000 sebulan akan menjadi angka yang lebih munasabah. Jumlah ini harus mencukupi untuk menampung perbelanjaan penting pempetisyen sambil mempertimbangkan sumbangan kewangannya sendiri dan kapasiti kewangan responden. Memandangkan tempoh perkahwinan dan tiadanya pendapatan semasa pempetisyen, adalah wajar untuk memerintahkan nafkah interim sehingga keputusan akhir prosiding perpisahan kehakiman (lihat perenggan 39, 41 & 44–45).]

Cases referred to

Ananda Dharmalingam v Chantella Honeybee Sargon [2006] 6 MLJ 179, HC (refd)
Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863; [2008] 4 CLJ 105, CA (refd)
Lee Chin Guan (L) v Pang Kim Joon (P) [2017] MLJU 2021; [2017] 1 LNS 1988, HC (refd)
Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133; [1997] CLJU 419; [1997] 1 LNS 419; [1997] 2 AMR 2108, HC (folld)
Lumsden v Lumsden [1963] 5 FLR 388 (refd)
Mark Sia Eng Joo (L) v Ong Wei Wei (P) (Lim Poh Tin (P), third party) [2019] MLJU 714; [2019] CLJU 1015; [2019] 1 LNS 1015, HC (folld)
Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy [2004] 6 MLJ 240; [2004] 7 CLJ 175, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 77(1)(a), 78

Vigneshvar a/l Ramarmuty (Ng Chee Kong & Co) for the appellant.
Goh Loh Boon (WH Kan) for the respondent.

Abdul Wahab J:

INTRODUCTION

[1] This is the petitioner's application for interim maintenance as detailed in para 66(c) of the judicial separation petition dated 26 May 2023. The petitioner seeks an interim maintenance payment of RM50,000 per month from the respondent, pending the disposal of the judicial separation petition.

BACKGROUND FACTS

[2] The petitioner and the respondent entered matrimony on 8 October 1987. Their union produced three children: Cheang Chu King (born 6 January 1988), Cheang Chu Wei (born 17 May 1990), and Cheang Chu Ching (born

A 27 October 1992), who are now 36, 33, and 31 years old, respectively.

[3] The petitioner and the respondent were in courtship since 1977, when the petitioner was approximately 15 years old and the respondent was 20 years old. During their courtship, the respondent prohibited the petitioner from working in any companies after she had completed her secondary education. Instead, the respondent had only agreed for the petitioner to conduct tuition classes from around 1981 until their marriage in 1987.

[4] At the material time, during their courtship, the respondent was an emerging entrepreneur in the motor accessories industry. With the petitioner's support, he incorporated Bestech Industries Sdn Bhd (Company No 76608–M) on 5 October 1981.

[5] Following their marriage in 1987, the petitioner ceased formal employment but continued to support the respondent with his business endeavours until the final stages of her pregnancy with their eldest child.

[6] After the birth of the children, while primarily responsible for their upbringing, the petitioner also intermittently assisted the respondent with his work as needed.

[7] The relationship between the parties had however deteriorated due to the respondent's alleged adulterous relationship with the co-respondent. Consequently, the respondent stopped providing the monthly sum of RM50,000 to the petitioner after May 2022.

[8] The petitioner claimed that due to the respondent's unreasonable behaviour, which rendered cohabitation untenable, and his adulterous relationship with the co-respondent, the petitioner vacated the matrimonial home on 4 April 2023, and subsequently filed the judicial seperation petition on 26 May 2023.

[9] After leaving the matrimonial home, the petitioner moved into a rented residence in Teluk Intan at No 23, Lorong Shahbandar 14, Taman Indah, 36000 Teluk Intan, Perak.

[10] Since the petitioner's departure from the matrimonial home on 4 April 2023, the respondent has ceased making payments towards the instalments for properties, vehicles, and insurance policies registered solely in the petitioner's name. As a result, the petitioner has had to rely on her savings and salaries from two family companies, Ganda KWC Plantations Sdn Bhd and Ganda Sunbest Plantation Sdn Bhd, to sustain herself and cover all related expenses.

[11] In her judicial separation petition, the petitioner had prayed for, amongst other relief, that the respondent be ordered to pay interim maintenance of RM50,000 to per month pending the disposal of the petition.

[12] The respondent has contested the petitioner's request for interim maintenance on the following grounds:

(a) the total sum claimed by the petitioner is excessively inflated and/or speculative;

(b) the plaintiff possesses the financial means to maintain her current lifestyle; and

(c) the respondent's monthly income and/or allowance is insufficient to meet the interim maintenance claimed by the petitioner.

[13] Consequently, the petitioner has filed encl 25, seeking a court order to compel the respondent to provide maintenance pending the trial of the judicial separation petition.

ISSUES TO BE DETERMINED

[14] From the submissions of both parties, this court identifies the following issues for determination:

(a) whether the petitioner is entitled to receive interim maintenance of RM50,000 per month from the respondent pending the disposal of the judicial separation petition ('entitlement to interim maintenance'); and

(b) the reasonable amount of interim maintenance to be awarded, if any ('assessment of maintenance amount').

THE LAW

[15] The court's authority to order maintenance during matrimonial proceedings is derived from s 77(1)(a) of the Law Reform (Marriage and Divorce) Act 1976 ('the LRMDA'), which states:

> 77 Power for court to order maintenance of spouse
>
> (1) The court may order a man to pay maintenance to his wife or former wife —
>
> (a) during the course of any matrimonial proceedings;
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> ...

[16] Section 78 of the LRMDA outlines the criteria for assessing maintenance as follows:

> 78 Assessment of maintenance

> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

[17] In gauging the maintenance quantum, s 78 of the LRMDA mandates the court to anchor its assessment primarily on the 'means and needs' of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife, eschewing consideration of the proportion such maintenance bears to the income of the husband or wife, whilst mindful of the attributed culpability for the breakdown of the marriage.

[18] In the case of *Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy* [2004] 6 MLJ 240; [2004] 7 CLJ 175 Faiza Tamby Chik J cited the case of the Supreme Court of Victoria, *Lumsden v Lumsden* [1963] 5 FLR 388 at p 394, where Hering CJ, Dean and Gowans JJ held:

> In the second place in awarding maintenance the court endeavours, subject to the Husband's financial position, to place the wife in a position to enjoy the same standard of living as she did during the marriage.

[19] In the case of *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105 the Court of Appeal underscored the principles governing maintenance payments, citing s 78 of the LRMDA, which directs courts to base maintenance assessments primarily on the parties' means and needs:

> [23] We observed that in his written judgment the learned judge had considered if not all but most of the authorities cited. In his judgment, the learned judge stated:
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> > Further s 78 of the Law Reform Act provides that in assessing the amount of maintenance to be paid by a man to his wife or former wife, 'the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.
> >
> > What is maintenance is defined in *Re Borthwick (Deceased)*, *Borthwick v Beauvais* [1949] Ch 395 where at p 401, His Lordship Harman J held:
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> > > It is said that maintenance is the only thing that you can look at. What does that mean? It does not mean that you can only give the dependant just enough to put a little jam on his bread and butter. It has been already held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case. It certainly depends to some extent on the circumstances of the widow, but I think it may also depend on the

> circumstances of the testator, that is to say, whether he dies a rich man or not, because a rich man may supposed to have made better provision for his wife's maintenance than a poor one. Maintenance does not only mean the food she puts in her mouth, it means the clothes on her back, the house in which she lives, and the money which she has in her pocket, all of which vary according to the means of the man who leaves a wife behind him. I think that must be so. Maintenance cannot mean only a mere subsistence.

[25] We are of the view that with the standard and cost of living of the respondent, the sum awarded is justifiable. We are in agreement with the learned counsel for the respondent that the respondent is to be placed in a position to enjoy the same standard of living as she had during the existence of the marriage. In *Lumsden v Lumsden* [1963] 5 FLR 388, the court held:

> ... In the second place in awarding maintenance the court endeavours, subject to the husband's financial position, to place the wife in a position to enjoy the same standard of living as she did during the marriage ...

(See also *Re Borthwick (Deceased), Borthwick v Beauvais* [1949] CH 395, *Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah* [2000] 6 MLJ 48; [2000] 3 CLJ 175.)

[26] The learned judge had clearly taken into consideration the individual circumstances of both parties, the needs and responsibilities of the parties, the assets and the earning capacity of the appellant. In *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Anor v Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2003] 3 MLJ 257; [2003] 3 CLJ 349, the Federal Court held that even assuming for a moment that the Court of Appeal erred in the application of the principles of law to the particular set of facts in the instant appeal, there is no room for that court to reverse the concurrent findings of fact made by the High Court and the Court of Appeal since it is trite that the appellate court is not prepared to interfere with the concurrent findings of fact made by the courts below.

[20] These legal canons were further fortified in the High Court's ruling in *Ananda Dharmalingam v Chantella Honeybee Sargon* [2006] 6 MLJ 179, which espoused that the sole criterion in adjudicating interim maintenance is the means and needs of the parties:

> ... By virtue of s 78 of the LRA set out aforesaid, the only test that this court needs to adopt in deciding if (interim) maintenance should be awarded to the wife in these proceedings is the means and needs of the parties ...

[21] In the matter of *Lee Chin Guan (L) v Pang Kim Joon (P)* [2017] MLJU 2021; [2017] 1 LNS 1988, the High Court reaffirmed that maintenance serves the purpose of enabling a recipient to lead a life consistent with that during the marriage. The encompasses not only basic necessities but also housing, clothing and financial stability. As articulated by Hayatul Akmal Abdul Aziz JC (as she then was):

> [13] The court looks to the nature of maintenance as a form of material provision

A that will enable an adult to live a normal life that he/she is accustomed to during the existence of the marriage. It cannot mean mere sustenance, ie, food, but also clothing, housing and money, all of which vary according to the means of a man who leaves a wife behind (see *Sivajothi a/p K Suppiah v Kunathasan a/l Chelliah* [2006] 3 MLJ 184; [2006] 5 CLJ 318; also see *Raquiza v Raquiza* [1947] 1 MLJ
B 202; [1947] CLJU 85; [1947] 1 LNS 85). In deciding whether a party is entitled to financial relief, the needs and means of both parties will be considered. In *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105, Court of Appeal held that:

> (3) ... The learned judge then decided to exercise his discretion to award
C RM6,000 to the respondent as maintenance and the learned judge had given his reasons for doing so. With the standard and cost of living of the respondent, the sum awarded was justifiable. The respondent was to be placed in a position to enjoy the same standard of living as she had during the existence of the marriage.

> Maintenance should be paid to the wife taking into consideration her means and
D needs while having regard to the duration of the marriage, the age of the parties and whether the husband had financially supported the wife throughout the duration of the marriage.

[22] It is clear from the above case law that in determining maintenance
E payments it is pertinent to consider the wife's means and needs, while also accounting for the duration of the marriage, the parties' ages and whether the husband provided financial support throughout the marriage.

[23] In this regard, this court finds further guidance in the case of *Mark Sia*
F *Eng Joo (L) v Ong Wei Wei (P) (Lim Poh Tin (P), third party)* [2019] MLJU 714; [2019] CLJU 1015; [2019] 1 LNS 1015 where the court had discussed the factors relevant to determining fair and reasonable maintenance pending the finalization of divorce proceedings as follows:

> G [21] The issue of a fair and reasonable maintenance must be determined by reference to the facts, evidence and circumstances of each case. In *Chaw Anui v Tan Kim Chai* [2004] 4 MLJ 272; [2004] CLJU 260; [2004] 1 LNS 260, the court considered the following factors: (1) devotion of the wife; (2) the unlikelihood of the wife to be gainfully employed; (3) the wife's health and medical needs; (4) the
H husband financial means; (5) the living standard of the wife; and (6) the means and the needs of the parties. In the present case, it is my considered view that the claim for maintenance pending the final determination of the divorce petition is to enable parties to maintain continuity of a normal life but at the same time the amount claim has to be reasonable and will not cause hardship to the other party as in this case, PH.

I

[24] Based on the case laws and legal principles discussed, the law governing the payment of interim maintenance is designed to provide financial support to a spouse during divorce proceedings, ensuring they can maintain a standard of living commensurate with that experienced during the marriage.

Consequently, the court is tasked with a balancing act, assessing the means and needs of the parties involved, ultimately arriving at a fair and equitable determination of maintenance obligations.

Entitlement to interim maintenance

[25] The parties have been married for approximately 36 years since 8 October 1987. The petitioner is now 61 years old and has not been employed since 1987 and has relied entirely on the respondent, a successful businessman, for financial support. She has been accustomed to a lifestyle provided by the respondent, a successful businessman. Throughout their marriage, the respondent provided the petitioner with a lifestyle including properties and shares, a monthly allowance of RM50,000, four cars (with all related costs covered by the respondent), supplementary credit cards with a combined limit of RM150,000, three domestic helpers, and a driver.

[26] The petitioner claims interim maintenance of RM50,000 per month, substantiated by detailed expenses amounting to RM58,269.99, reflecting her accustomed standard of living as follows:

Item description	Amount (RM)
Food (home cooking and eating out)	4,000
Groceries	1,500
Petrol and toll	600
House rental	2,700
Utility bills	400
Personal care, skin care and haircare products	400
Hair care (hair saloon), skin care (beauty saloon), foot massage	1,000
Clothes, shoes and bags	300
Healthcare and medical	420
Supplements	4,500
Insurance	377.83
Holidays (local and overseas)	5,000
Chinese New Year expenses (pro-rated)	2083.33
Monthly salary for two domestic helpers	3,700
Food and groceries for two domestic helpers	1,500
Medical expenses for domestic helper	500
Permit fees for two domestic helpers every year	215
Flight ticket expenses for domestic helpers	250
Driver	2,500
Properties	
Teluk Intan Shop	5,745

Miri Property	13,302
Taman Bayshore House	60
Quit rent and assessment for Lot 11185, 11194, (two out of four pieces of land around the matrimonial home) Dearah Hilir Perak, Mukim Durian Sebatang, Negeri Perak	70
Cars	
Toyota Land Cruiser	6,170.82
Toyota C-HR	285.76
Mercedes Benz E270	351.17
BMW 325l Sport E90	339.08
Total	RM58,269.99

[27] Considering the legal principles and the facts presented, it is evident that the petitioner has not been gainfully employed since 1987 and has relied solely on the respondent for financial support. Her lifestyle was significantly sustained by the respondent including the provision of a monthly allowance, ownership of properties, access to cars, credit cards and domestic staff.

[28] The evidence establishes that the petitioner was primarily dependent on the respondent's financial support throughout the duration of their marriage. Despite some income from family-owned companies, it remains insufficient to cover her total expenses.

[29] While the petitioner's income and savings offer a degree of financial stability, they fall short of maintaining the standard of living she was accustomed to during the marriage. Therefore, an interim maintenance order is necessary to bridge this financial gap.

[30] As established by relevant legal authorities, the court's objective is to place the wife in a position where she can continue to enjoy the same standard of living she experienced during the marriage, contingent upon the husband's financial capacity. It is thus my definitive finding that the petitioner is entitled to the interim maintenance.

[31] This court shall now proceed to assess the appropriate amount based on the evidence of the petitioner's needs and the defendant's financial means.

Assessment of maintenance amount

[32] The respondent contests the proposed interim maintenance as being excessively inflated and exorbitant. The petitioner has admitted to receiving

monthly earnings of RM8,986.90 from Ganda KWC Plantations Sdn Bhd and RM8,441.95 from Ganda Sunbest Plantations Sdn Bhd.

[33] Additionally, the respondent contends that the petitioner failed to disclose bonuses and dividends received from these companies, including a bonus of RM200,000 in March 2021, RM100,000 in February 2022, and RM50,000 in January 2023 from Ganda KWC, as well as RM30,000 from Ganda Sunbest in January 2023. Furthermore, dividends from Miri Timur Plantation Sdn Bhd amounted to RM188,171.72 in January 2022, RM313,619.53 in August 2022, and RM156,809.77 in December 2022, along with rental income of RM1,600 per month from Maxis Broadband Sdn Bhd.

[34] The respondent also highlights the petitioner's substantial bank balances, including an opening balance of RM421,594.33 in 2019 and a closing balance of RM34,363.35 as of September 2023 in the CIMB Bank account, as well as RM3,448,938.79 as of November 2023 and savings of RM616,312.85 in the EPF account.

[35] The respondent asserts that the petitioner was receiving a monthly income of RM10,000 from Ganda KWC and RM25,000 from Ganda Sunbest since June 2022 which was later reduced to RM10,000 in September 2023 asserting that these sources adequately cover her maintenance.

[36] The petitioner maintains that she has made a full and frank disclosure of her financial situation, supported by the evidence presented.

[37] The respondent claims a monthly income of RM149,052.50 from various companies and a dividend of RM240,000 from Rent Weld Sdn Bhd in 2023. He contends that he requires RM135,000 monthly to cover his expenses. However, this claim is questionable given the historical support he provided to the petitioner suggesting his capability to continue providing maintenance at a similar level.

[38] Referring to *Koay Cheng Eng v Linda Herawati Santoso*, the court emphasised that the respondent should be placed in a position to enjoy the same standard of living as during the marriage, within the financial means of the husband.

[39] The petitioner's disclosure of income and bonuses from family companies appears adequate in my considered view.

[40] Without clear evidence of the respondent's financial limitations, fully assessing his capacity to pay the claimed amount remains challenging. In line with *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133; [1997] CLJU 419; [1997] 1 LNS 419; [1997] 2 AMR 2108, the lack of full and frank disclosure by the respondent regarding his income leads the court to draw adverse inferences necessitating a higher maintenance award to account for potential undisclosed means, as held by Mahadev Shankar J (as he then was) as follows:

> I entirely agree with Ms Chew that these rules impose upon the parties a spontaneous duty to exercise the utmost good faith in making the fullest disclosure of all relevant information. The cases she cited of *J v J* [1955] P 215 and *Livesey v Jenkins* [1985] FLR 813 are very persuasive because rr 73, 74 and 77 of the English Matrimonial Causes Rules 1977 are very similar. I quote with approval what Sachs J said in *J v J*:
>
> > ... where a husband is fully capable of and has had opportunity to explain those affairs, and where he seeks to minimize the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour ....
> >
> > The effect has been that owing to the husband's grossly defective affidavit of documents, his failure to put before the court documents, the reticencies in his long examination-in-chief, and his complete omission to keep or produce (I know not which) books of account, there have been kept from the court vital facts which he ought to have made plain. His attitude, to my mind, has been throughout an attitude of 'catch me if you can'. In substance, he sought to give the impression of a man barely subsisting in a Nissen hut, and then to say 'disprove that and the consequent inferences if you can'.
> >
> > For a husband in maintenance proceedings simply to wait and hope that certain questions may not be asked in cross-examination is wholly wrong.
> >
> > In the light of this apparent misapprehension, it is as well to state expressly something which underlies the procedure by which husbands are required in such proceedings to disclose their means to the court. Whether that disclosure is by affidavit of facts, by affidavit of documents or by evidence on oath (not least when the evidence is led by those representing the husband) the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings — in so far as such inferences can properly be drawn.
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> The cross-examination of the respondent produced disclosures which cannot be reconciled with his affidavit that his total income in 1992 was RM1,768.25 per month. His tax returns show his annual taxable income in 1992 was RM38,175 or RM3,181 per month. The corresponding figure for 1993 was RM3,142 per month. In 1994, the respondent held credit cards from Diner's Club, Master and Visa Cards from Hongkong Bank, and credit cards from Citibank and Chung Khiaw Bank. The minimum salary qualification to get such cards is RM24,000 per annum. His bank statements of his Hongkong Bank current account between February and

August 1994 show other amounts credited which are well in excess of his monthly salary. For example, in February 1994 the excess totalled RM12,062. In the other months, they ranged from RM2,200 to RM2,900.

As for the advertising business of Artree and Diamond Wood Sdn Bhd, we have to start from the premise that in 1984 it was the respondent who was the seasoned businessman. Fifi was only 22 and just out of a school for commercial art. The respondent's sister, Helen has not been shown to be especially qualified. In the business cards produced, the respondent holds himself out as director. It is more reasonable to infer that the respondent set up these businesses and kept them going. In the absence of any documents from the Businesses or the Companies Registries, it must be inferred that these businesses are still ongoing. Furthermore, the respondent sought to explain the difference between his alleged monthly income of RM1,768.25 and his proven monthly expenditure in excess of that sum by saying that Fifi subsidized him. Without going into all the rest of the discrepancies and evasions in his evidence, I think it is not unsafe to infer that his monthly emoluments are in excess of RM4,000 per month.

[41] Given the circumstances and the respondent's consistent support for the petitioner throughout their marriage, I find the respondent's assertion of monthly income highly doubtful. Regrettably, the respondent's failure to provide full and frank disclosure of his income leaves his monthly income uncertain. Considering these factors and applying the principles discussed above, I am confident in concluding that the respondent husband has the means to meet the interim maintenance claimed.

[42] Notwithstanding the above, it is worth noting that some of the petitioner's claimed expenses may be considered inflated, particularly dining, holiday and celebratory expenses. While these reflect her standard of living during the marriage, an interim maintenance award should reasonably cover her essential and necessary expenses without being excessive.

[43] In determining the interim maintenance amount, this court also took into account the petitioner's monthly earnings from Ganda KWC Plantations Sdn Bhd and Ganda Sunbest Plantations Sdn Bhd, along with her dividends and rental income.

[44] Given the petitioner's substantial financial assets and income from other sources, an interim maintenance award of RM30,000 per month would be a more reasonable figure. This amount should adequately cover the petitioner's necessary expenses while considering her own financial contributions and the respondent's financial capacity.

[45] Considering the length of the marriage and the petitioner's current lack of income, it is appropriate to order interim maintenance until the final determination of the judicial separation proceedings.

A CONCLUSION

[46] Based on the above considerations, the court orders that the respondent shall pay interim maintenance of RM30,000 per month to the petitioner, pending the disposal of the judicial separation petition. This amount adequately addresses the plaintiff's needs, compensates for her sacrifices, and reflects the defendant's financial capacity while ensuring fairness to both parties. The award is designed to enable the plaintiff to maintain a lifestyle similar to what she was accustomed to during the marriage and to meet her ongoing medical and living expenses.

[47] The respondent is directed to make the monthly payment of RM30,000 on or before the seventh day of each month into the bank account nominated by the petitioner until further orders of the court or the final disposal of the judicial separation petition.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh